(3)

TRACY LEE HUDSON
Petitioner

VERSUS

NUMBER: 79-5688

STATE OF LOUISIANA
Respondent

Supreme Court, U.S.
FILED
FEB 11 1980
MICHAEL RODAK, JR., CLERK

ANSWER TO PETITION FOR WRIT OF CERTIORARI
TO REVIEW A JUDGMENT OF THE LOUISIANA SUPREME COURT

NOW INTO COURT comes the State of Louisiana, through the undersigned District Attorney for the Twenty-Sixth Judicial District, who answers the Petition for Writ of Certiorari to Review a Judgment of the Louisiana Supreme Court as follows:

1.

On March 3, 1977, Tracy Lee Hudson was tried before a jury of twelve and by unanimous verdict was convicted of first degree murder. On March 7, 1977, the presiding judge granted the defendant, pursuant to the laws of the State of Louisiana, a new trial. The presiding judge, in granting the defendant a new trial, clearly stated that he was granting the new trial, not because the defendant was entitled to a new trial as a matter of strict legal right, but because in the opinion of the trial judge the ends of justice would be better served by the granting of a new trial.

Under the Louisiana law, the trial judge has the right to grant a new trial if he feels the ends of justice would be better served by doing so and this granting of a new trial is not reviewable by the Louisiana Supreme Court. Louisiana Code of Criminal Procedure, Article 851(5). It should be noted that the trial judge granted the defendant a new trial and not an acquittal.

On September 30, 1977, the defendant was once more tried for the crime of first degree murder and once more a jury of twelve unanimously convicted him of murder. This conviction was appealed to the Louisiana Supreme Court and affirmed with a rehearing being denied on August 31, 1978. 361 So.2d 858

On October 2, 1978, petitioner filed for Habeas Corpus relief in the Twenty-Sixth Judicial District Court for the State of Louisiana alleging for the first time that the second trial [illegible] jeopardy in violation of the

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On October 2, 1978, petitioner filed for Habeas Corpus relief in the Twenty-Sixth Judicial District Court for the State of Louisiana alleging for the first time that the second trial in this case placed him in jeopardy in violation of the double jeopardy clause of the Fifth Amendment. The trial court denied this relief and petitioner appealed to the Louisiana Supreme

Court. The Louisiana Supreme Court denied his relief and clearly considered the case of Burks vs. United States 98 S.Ct. 2141, 51 L.Ed 2d 1. In its denial of the Habeas Corpus relief sought by Tracy Hudson, the Louisiana Supreme Court stated that the trial court was not finding the lack of evidence for conviction at the first trial. In other words, the trial court did not find no evidence which would have warranted a conviction and the Louisiana Supreme Court pointed out that if the case had been appealed it would have found sufficient evidence to have warranted conviction. The Louisiana Supreme Court found that the trial judge simply felt that in the ends of justice and his conscious, a new trial should be granted even though legally the defendant was not entitled to such. Therefore, the Louisiana Supreme Court found that the case of Burks was not applicable in this situation.

2.

Louisiana Code of Criminal Procedure, Article 851(5) states that the trial judge, on the motion of the defendant, shall grant a new trial whenever:

> "The court is of the opinion that the ends of justice would be served by the granting of a new trial, although the defendant may not be entitled to a new trial as a matter of strict legal right."

The concurring opinion of Justice Tate, as well as the majority opinion, clearly sets forth that the trial judge, at the first conviction of the defendant, Tracy Hudson, was simply indicating that he felt a new trial should be granted to meet the ends of justice and not because there was no evidence whatsoever of the defendant's guilt or that the defendant was entitled to an acquittal. It is clear that the trial judge ordered a new trial and not a dismissal of the charges.

3.

It is respectfully submitted that this Honorable Court should accept the factual determination by the Louisiana Supreme Court and find that the rational set forth in Burks has no application to this case arising under the Louisiana Substantive and Procedural Laws. Alternatively, this Honorable Court should refuse to grant Writs of Certiorari and allow the procedures to progress through the lower Federal Courts in order that an evidentiary hearing can be conducted if this court has any doubt to the reasoning of the trial judge.

CONCLUSION

The defendant, Tracy Hudson, was tried twice and convicted twice and a grave injustice would be done if he was now released from custody. The trial judge had no intention of finding that no evidence existed of Tracy Hudson's guilt after the first trial but simply felt

that he should be given a second chance or a second trial. The Louisiana Supreme Court made it clear that the trial judge had no legal obligation to grant Tracy Hudson a new trial and that sufficient evidence did exist for the conviction of Tracy Hudson at the first trial. Therefore, if sufficient evidence did exist for the conviction of Tracy Hudson at the first trial, the question of Burks vs. United States would not arise and therefore, this Application for Writ of Certiorari should be denied. Alternatively, the matter should be denied and referred to the lower courts for evidentiary hearing.

Respectfully submitted,

Henry N. Brown, Jr.
District Attorney
26th Judicial District Court
In and for the Parishes of
Bossier-Webster, State of
Louisiana

C E R T I F I C A T E

This is to certify that a true and correct copy of the foregoing Answer to the Application for Writs of Review to the United State Supreme Court has been served upon the following party by mailing such postage prepaid on this the 7th day of February, 1980. Richard Otto Burst, Sr., Attorney for Petitioner, Tracy Lee Hudson, Burst and Dewart, Attorneys Inc., 209 East Oklahoma, Post Office Box 578, Guthrie, Oklahoma 73044.

HENRY N. BROWN, JR.